

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA ex rel.
LARRY E. PITTMAN, *et al.*,

Plaintiffs,

v.

KING'S COMMAND FOODS, INC.,

Defendant.

Case No. C03-2829L

ORDER REGARDING
MOTION TO COMPEL

This matter comes before the Court on defendant's motion to compel discovery or in the alternative to dismiss plaintiffs Gregory Cody and Nathan Kilcrease ("Mr. Cody and Mr. Kilcrease").¹ (Dkt. #40). Defendant seeks to compel Mr. Cody and Mr. Kilcrease to provide responses to Defendant's First Set of Interrogatories and Requests for Production. Although responses were due on April 18, 2005, defendant has received nothing from these two plaintiffs.

After the April 18, 2005 deadline passed, defense counsel contacted plaintiffs' counsel several times to inquire about the overdue responses. Defense counsel was forced to reschedule

¹ Defendant also filed its motion against Darrell Cody. However, defendant has informed the Court that it has received the requested discovery from Darrell Cody and requests to withdraw the motion as to him. Defendant's request to withdraw that portion of the motion (Dkt. #42) is GRANTED. This order will address only plaintiffs Gregory Cody and Nathan Kilcrease.

1 plaintiffs' depositions rather than proceed without the discovery responses. On May 6, 2005,
2 plaintiffs finally produced some of the overdue responses, but have produced nothing from Mr.
3 Cody or Mr. Kilcrease. On May 10, 2005, plaintiffs' counsel informed defense counsel that
4 they were unable to locate Mr. Cody and Mr. Kilcrease, and that those plaintiffs would not be
5 able to respond to defendant's outstanding discovery requests.

6 Defendant moves, pursuant to Fed. R. Civ. P. 37(a)(2), to compel Mr. Cody and Mr.
7 Kilcrease to respond to the outstanding discovery requests. Plaintiffs have not responded to the
8 motion. Accordingly, the Court finds that Mr. Cody and Mr. Kilcrease have failed to comply
9 with their discovery obligations, and an order compelling them to do so is appropriate. Although
10 dismissal as a sanction is not appropriate at this time, defendant may file an appropriate motion
11 if Mr. Cody and Mr. Kilcrease fail to comply with this order or otherwise continue to ignore
12 their discovery obligations in this case.

13 For the foregoing reasons, the Court GRANTS defendant's motion to compel discovery
14 from plaintiffs Gregory Cody and Nathan Kilcrease. (Dkt. #40). Mr. Cody and Mr. Kilcrease
15 are ordered to provide complete, signed responses to Defendant's First Set of Interrogatories and
16 Requests for Production on or before June 10, 2005. Defense counsel may submit, within
17 twenty days of the date of this order, a statement of their reasonable costs and fees incurred in
18 bringing this motion.

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20 DATED this 3rd day of June, 2005.

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23 Robert S. Lasnik
24 United States District Judge
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